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November 2, 2009



Ms. Anne K. Quinlan  
Acting Secretary  
Surface Transportation Board  
395 E Street, S.W.  
Washington, D.C. 20423-0001

*FD 35316*

Re: Allied Erecting & Dismantling, Inc. and Allied Industrial Development Corporation v. Ohio Central Railroad, Inc., Ohio & Pennsylvania Railroad Company, The Warren & Trumbull Railroad Company, Youngstown & Austintown Railroad, Inc., The Youngstown Belt Railroad Company, The Mahoning Valley Railway Company, Summit View, Inc., and Genesee & Wyoming, Inc. - Petition for Declaratory Order

Dear Secretary Quinlan:

Enclosed for filing is an original and ten (10) copies of a Petition for Declaratory Order in the above-captioned matter. A check in the amount of \$1,000.00, representing the appropriate fee for this filing, is also enclosed. If you have any questions regarding this filing, please feel free to contact me. Thank you for your assistance on this matter.

Very truly yours,

Richard Streeter

**FILED**  
NOV - 2 2009  
SURFACE  
TRANSPORTATION BOARD

Enclosures

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BEFORE THE SURFACE TRANSPORTATION BOARD  
DEPARTMENT OF TRANSPORTATION  
WASHINGTON, D.C. 20423



ALLIED ERECTING AND  
DISMANTLING, INC. and ALLIED  
INDUSTRIAL DEVELOPMENT  
CORPORATION,

Petitioners,

v.

OHIO CENTRAL RAILROAD, INC.,  
OHIO & PENNSYLVANIA  
RAILROAD COMPANY, THE  
WARREN & TRUMBULL RAILROAD  
COMPANY, YOUNGSTOWN &  
AUSTINTOWN RAILROAD, INC.,  
THE YOUNGSTOWN BELT  
RAILROAD COMPANY, THE  
MAHONING VALLEY RAILWAY  
COMPANY, and SUMMIT VIEW, INC.,  
collectively d/b/a The Ohio Central  
Railroad System, and GENESEE &  
WYOMING, INC.,

Respondents.

STB Docket No. FD 35316

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**PETITION FOR DECLARATORY ORDER**

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BEFORE THE SURFACE TRANSPORTATION BOARD  
DEPARTMENT OF TRANSPORTATION  
WASHINGTON, D.C. 20423



ALLIED ERECTING AND  
DISMANTLING, INC. and ALLIED  
INDUSTRIAL DEVELOPMENT  
CORPORATION,

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v.

OHIO CENTRAL RAILROAD, INC.,  
OHIO & PENNSYLVANIA  
RAILROAD COMPANY, THE  
WARREN & TRUMBULL RAILROAD  
COMPANY, YOUNGSTOWN &  
AUSTINTOWN RAILROAD, INC.,  
THE YOUNGSTOWN BELT  
RAILROAD COMPANY, THE  
MAHONING VALLEY RAILWAY  
COMPANY, and SUMMIT VIEW, INC.,  
collectively d/b/a The Ohio Central  
Railroad System, and GENESEE &  
WYOMING, INC.,

Respondents.

STB Docket No. \_\_\_\_\_

**PETITION FOR DECLARATORY ORDER**

Petitioners, Allied Erecting & Dismantling, Inc. and Allied Industrial Development Corporation (collectively “Allied”), by their attorneys, file this Petition For Declaratory Order, pursuant to the Interstate Commerce Commission Termination Act, 49 U.S.C. § 10101 *et seq.* In support of the Petition, Allied states as follows:

**I. Introduction**

1. The instant Petition arises out of an action which is presently pending in the Court of Common Pleas of Mahoning County, Ohio at civil action no. 2006-cv-00181 (the “State Court

Action”). The State Court Action is presently stayed pending the resolution of certain issues which have been referred to the Surface Transportation Board for resolution.

## **II. The Parties**

2. Allied Erecting & Dismantling, Inc. (“Allied Erecting”) is a corporation organized and existing under the laws of the State of Ohio, with a principal place of business at 2100 Poland Avenue, Youngstown, Ohio 44502.

3. Allied Industrial Development Corporation (“Allied Industrial”) is a corporation organized and existing under the laws of the State of Ohio, with a principal place of business at 2100 Poland Avenue, Youngstown, Ohio 44502.

4. Allied is informed, believes and therefore avers that The Ohio Central Railroad System is an unincorporated and unregistered association of ten railroads that operate throughout East Central and Northeastern Ohio and in the Pittsburgh, Pennsylvania area, with a principal place of business at 47849 Papermill Road, Coshocton, Ohio 43812.

5. Allied is informed, believes and therefore avers that defendants Ohio Central Railroad, Inc., Ohio & Pennsylvania Railroad Company, The Warren & Trumbull Railroad Company, Youngstown & Austintown Railroad, Inc., The Youngstown Belt Railroad Company, and The Mahoning Valley Railway Company (collectively “Ohio Central”) are corporations organized and existing under the laws of the State of Ohio, and are six of the ten railroads of the Ohio Central Railroad System.

6. Allied is informed, believes and therefore avers that Summit View, Inc. (“Summit View”) and Genesee & Wyoming, Inc. (“Genesee & Wyoming”) are the owners, operators and corporate parents of the railroads which operate as the Ohio Central Railroad System, including the “Ohio Central” defendants.

### **III. Factual Background**

7. Allied Industrial and Allied Erecting are the owners of parcels of commercial property located in Youngstown, Ohio (collectively the "Allied Property"). The Allied Property was the former location of an LTV Steel Company, Inc. ("LTV") plant, which has been decommissioned and demolished.

8. Various sets of railroad tracks are located on the Allied Property.

9. By easement agreement dated May 6, 1993 , Allied Industrial granted, inter alia, a perpetual, non-exclusive railroad easement to LTV in connection with certain real property LTV conveyed to Allied Industrial (the "LTV Easement Agreement").

10. The tracks which are subject to the LTV Easement Agreement are not main rail lines, but instead are spur, side, or industrial tracks, and were used only in connection with the former industrial uses of the Allied Property and the adjacent industrial properties.

11. At the time, LTV owned other real property adjacent to, and in the vicinity of, the property it conveyed to Allied Industrial, namely the LTV Electric Welded Tube facility, which necessitated that LTV retain the right to access its facility over the industrial and/or spur lines at issue herein. The LTV Easement Agreement is attached to Allied's Amended Complaint in the State Court Action as Exhibit 1; a copy of Allied's Amended Complaint is attached hereto as Exhibit A.

12. The Railroad Easement set forth in the LTV Easement Agreement allowed LTV to "operate, use, maintain, repair, restore, replace, and abandon (at LTV's sole cost and expense) the railroad tracks and related equipment" for the intended purpose of running rail cars on various specifically identified tracks located on the Allied Property.

13. Allied is informed, believes and therefore avers that LTV subsequently conveyed all of its right, title and interest in the LTV Easement Agreement to Ohio Central and, therefore,

Ohio Central is or was the successor-in-interest to, and/or assignee of, LTV and, as such, is or was entitled to only those limited rights and privileges as LTV possessed arising from the LTV Easement Agreement.<sup>1</sup>

14. By Easement Agreement dated September 17, 1993 (the "P&LE Easement Agreement"), Allied Erecting granted, inter alia, a perpetual non-exclusive easement to Pittsburgh and Lake Erie Properties, Inc. ("P&LE") for "railroad operations" in connection with certain real property P&LE conveyed to Allied Erecting (namely P&LE's main line, including land between Survey Station 45+00± in the City of Struthers and Survey Station 153+00± in the city of Youngstown). The P&LE Easement Agreement is attached to Allied's Amended Complaint as Exhibit 2.

15. Allied is informed, believes and therefore avers<sup>2</sup> that the P&LE Easement Agreement was subsequently assigned and conveyed through multiple entities, and is now owned by Eastern States Railroad, LLC, as set forth in the Verified Notice of Exemption of Eastern States Railroad, LLC Pursuant to 49 C.F.R. § 1150.31, STB Finance Docket No. 34934 (November 22, 2006). A true and correct copy of the Verified Notice of Exemption of Eastern States Railroad, LLC Pursuant to 49 C.F.R. § 1150.31 is attached hereto as Exhibit B.

16. In or around 2004, defendant Ohio & Pennsylvania Railroad began to operate over the P&LE main line pursuant to an Interim Operating Agreement with the Trustee of the Central Columbiana & Pennsylvania Railway, Inc. ("CQPA"), in the CQPA bankruptcy proceeding, which was pending in the United States District Court for the Eastern District of

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<sup>1</sup> Allied does not concede that Ohio Central presently has any easement rights pursuant to the LTV Easement Agreement due to Allied's April 13, 2009 purchase of the properties which the LTV Easement Agreement was intended to benefit. See infra.

<sup>2</sup> In the State Court Action, Allied alleged that Ohio Central was "an assignee and/or successor in interest by and through P&LE of certain limited railroad easement rights arising from the P&LE Easement Agreement. Based upon facts learned through discovery in the State Court Action and Allied's own investigation, Allied understands that Ohio Central, and more specifically, Ohio & Pennsylvania Railroad, was never an assignee of the P&LE Easement Agreement, but instead was a lessee of the rights created by the P&LE Easement Agreement for certain periods of time, which easement rights were ultimately terminated as of December 21, 2006.

Arkansas at case no. 04-BK-16887T (the “CQPA Bankruptcy Proceeding”). At that time, the CQPA was, upon information and belief, a lessee of the rights created by the P&LE Easement Agreement.

17. However, pursuant to an order of the Bankruptcy Court in the CQPA Bankruptcy Proceeding, the Ohio & Pennsylvania Railroad’s Interim Operating Agreement terminated upon the effective date of the Verified Notice of Exemption of Eastern States Railroad, LLC Pursuant to 49 C.F.R. § 1150.31, i.e., December 21, 2006, as set forth in footnote 1 thereof.

18. Neither the Ohio & Pennsylvania Railroad, nor any other defendant in this action, presently has any interest in the LTV or P&LE Easement Agreements, or any other right to operate over the tracks which are the subject of the LTV or P&LE Easement Agreement.

19. In violation of the limited and non-exclusive LTV Easement Agreement, the P&LE Easement Agreement and/or Allied’s common law property rights, Ohio Central has continually held, stored, and/or otherwise impermissibly stopped rail cars on various railroad tracks on the Allied Property in a manner that: (1) adversely impacts not only Allied's ability to utilize these tracks, but also its current operations and its intended development plans, (2) allows hazardous contents of rail cars containing, inter alia, oil, chemicals and/or untarped construction and demolition debris to contaminate the Allied Property, (3) creates an attractive nuisance to vagrants and vandals, and (4) allowed Ohio Central to use and benefit from these tracks without paying Allied for such use.

20. Further, Ohio Central is holding, storing and/or otherwise impermissibly stopping its cars on railroad tracks on the Allied Property upon which it has no easement rights whatsoever, and has damaged Allied's rail, bumpers, and other property.

### **III. The State Court Action**

21. On January 17, 2006, due to Ohio Central's violations of the LTV Easement Agreement, the P&LE Easement Agreement and Allied's common law rights, Allied commenced the State Court Action by filing a Complaint against Ohio Central in the Court of Common Pleas of Mahoning County, Ohio, which was docketed at civil action no. 2006-cv-00181.

22. Shortly thereafter, on February 6, 2006, Allied filed its First Amended Complaint against Ohio Central. See Exhibit A.

23. Allied's Amended Complaint states four (4) causes of action: (1) the misuse, abuse, and/or overburdening of non-exclusive railroad easements; (2) the unreasonable use of the easements; (3) unjust enrichment and deprivation of property; and (4) trespass ab initio.

24. On March 6, 2006, Ohio Central removed the State Court Action to the Northern District of Ohio pursuant to 28 U.S.C. § 1446 on the grounds that Allied's claims were completely preempted by the Interstate Commerce Commission Termination Act of 1995, 49 U.S.C. §§ 10101 et seq.

25. Allied successfully opposed the removal of the State Court Action, and it was remanded to the Court of Common Pleas of Mahoning County on October 12, 2006. The remand of the State Court Action was without prejudice to Ohio Central's ability to raise the issue of Surface Transportation Board jurisdiction in the Court of Common Pleas of Mahoning County.

26. After the State Court Action was remanded, the parties engaged in discovery, but did not complete discovery.

27. On May 1, 2009, Ohio Central filed a "Motion to Dismiss or in the Alternative Refer to the Surface Transportation Board (the "Motion to Dismiss") on the grounds that Allied's



claims were preempted by the Interstate Commerce Commission Termination Act, 49 U.S.C. § 10101 et seq. Allied opposed the relief sought by the Motion to Dismiss.

28. On September 1, 2009, the Court of Common Pleas of Mahoning County, Ohio issued an opinion granting Ohio Central's Motion to Dismiss, referring certain issues to the Surface Transportation Board, and staying the case pending the resolution of said issues. A true and correct copy of the court's September 1, 2009 opinion is attached hereto as Exhibit C.

29. Additionally, and by way of background, as of March 26, 2009, Allied purchased from Gearmar Properties, Inc. Youngstown City Lot Nos. 62320 and 62188, which are the parcels of property which the LTV Easement Agreement was intended to benefit.

30. At the time of Allied's purchase of these properties, Ohio Central was a squatter and trespasser on these properties, and possessed no legal or equitable right to occupy these properties.

31. Due to Ohio Central's unlawful presence on Youngstown City Lot Nos. 62320 and 62188, Allied commenced an eviction proceeding against Ohio Central and Genesee & Wyoming in the Court of Common Pleas of Mahoning County, Ohio (the "Eviction Proceeding").

32. The defendants subsequently removed the Eviction Proceeding to the Northern District of Ohio, where it was docketed at civil action no. 4:09-cv-01904-JG and assigned to Judge James S. Gwin. The Eviction Proceeding is presently in discovery and a trial date has been set for March 22, 2010.

#### **IV. Issues to be Resolved**

33. The specific issues referred to the Surface Transportation Board by the Court of Common Pleas of Mahoning County in the State Court Action are the following: a) whether the issues regarding Ohio Central stopping or storing cars on the railroad tracks in question, in

alleged violation of the easement agreements, fall within the jurisdiction of the Surface Transportation Board; b) whether the easements in question allow Ohio Central to store or stage cars on the tracks covered by those easements; and c) if Ohio Central has violated the easements, what damages are available to Allied.

34. In addition to the foregoing issues, Allied would ask that the Surface Transportation Board declare that Ohio Central, its successors and assigns presently have no operating or other property rights over the railroad tracks which are related to both the P&LE Easement Agreement and the LTV Easement Agreement.

35. As set forth above, with respect to the LTV Easement Agreement, Ohio Central's rights under the LTV Easement Agreement have been terminated, under the "merger by deed" doctrine or other principles of law or equity, by Allied Industrial's purchase of the adjacent properties which the LTV Easement Agreement was intended to benefit, namely Youngstown City Lot Nos. 62320 and 62188.

36. As set forth above, with respect to the P&LE Easement Agreement, Ohio Central's right to operate on the tracks which are subject to the P&LE Easement Agreement have been terminated as of the effective date of the Verified Notice of Exemption of Eastern States Railroad, LLC Pursuant to 49 C.F.R. § 1150.31, filed at STB Finance Docket No. 34934, as more fully described in footnote 1 thereof.

WHEREFORE, Plaintiffs Allied Erecting and Dismantling, Inc. and Allied Industrial Development Corporation respectfully request that the Surface Transportation Board issue a declaratory order 1) regarding whether, and if so, to what extent the issues raised by Allied's Amended Complaint fall within its jurisdiction; 2) regarding whether the easements in question allow Ohio Central to store or stage cars on the tracks covered by those easements; 3) establishing the amount of damages Allied is entitled to because of Ohio Central's violations of

the LTV Easement Agreement and/or Allied's common law property rights; 4) regarding whether Ohio Central, its successors and assigns presently have any operating or other property rights over the railroad tracks which are related to the P&LE Easement Agreement and the LTV Easement Agreement; and 5) establishing that the tracks which are subject to the LTV Easement Agreement are not main line tracks, but instead are spur, side, or industrial tracks.

Respectfully submitted,



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Attorneys for Plaintiffs, Allied Erecting and  
Dismantling, Inc. and Allied Industrial  
Development Corporation

Dated: November 2, 2009

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Petition for Declaratory Order was served upon the following counsel by first class United States mail, this 30th day of October, 2009.

C. Scott Lanz, Esquire  
SLanz@mbpu.com  
Thomas Lipka, Esquire  
TLipka@mbpu.com

Manchester, Bennett, Powers & Ullman  
Atrium Level Two  
The Commerce Building  
201 East Commerce Street  
Youngstown, OH 44503

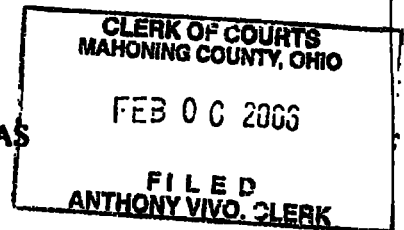
A handwritten signature in black ink, appearing to read "R.H. Streeter", with a horizontal line drawn underneath it.

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Attorneys for Plaintiffs Allied Erecting and  
Dismantling, Inc. and Allied Industrial  
Development Corporation

# EXHIBIT A

IN THE COURT OF COMMON PLEAS  
MAHONING COUNTY, OHIO



ALLIED ERECTING AND DISMANTLING  
COMPANY, INC.  
2100 Poland Avenue  
Youngstown, OH 44502

and

ALLIED INDUSTRIAL DEVELOPMENT  
CORPORATION  
2100 Poland Avenue  
Youngstown, OH 44502

Plaintiffs,

v.

OHIO CENTRAL RAILROAD, INC.,  
Individually and d/b/a The Ohio Central  
Railroad System, an unincorporated and  
unregistered association  
c/o William A. Strawn II, Statutory Agent  
47849 Papermill Road  
Coshocton, OH 43812

and

OHIO & PENNSYLVANIA  
RAILROAD COMPANY, Individually and  
d/b/a The Ohio Central Railroad System, an  
unincorporated and unregistered association  
c/o William A. Strawn II, Statutory Agent  
47849 Papermill Road  
Coshocton, OH 43812

and

THE WARREN & TRUMBULL RAILROAD  
COMPANY, Individually and d/b/a The Ohio  
Central Railroad System, an unincorporated  
and unregistered association  
c/o William A. Strawn II, Statutory Agent  
47849 Papermill Road  
Coshocton, OH 43812

Case No. 2006-CV-00181

JUDGE MAUREEN A. SWEENEY

**FIRST AMENDED COMPLAINT**  
**UNDER CIV. R. 14(A)**

**COUNT I: MISUSE/ABUSE/OVER-  
BURDENING OF NONEXCLUSIVE  
RAILROAD EASEMENTS (Other Civil);**

**COUNT II: UNREASONABLE USE OF  
EASEMENTS (Other Civil);**

**COUNT III: UNJUST ENRICHMENT  
AND DEPRIVATION OF PROPERTY  
(Other Civil); and**

**COUNT IV: TRESPASS AB INITIO (Other  
Tort)**

**WITH JURY DEMAND ENDORSED  
HEREON**

and

**YOUNGSTOWN & AUSTINTOWN  
RAILROAD, INC., Individually and d/b/a The  
Ohio Central Railroad System, an  
unincorporated and unregistered association  
c/o William A. Strawn II, Statutory Agent  
47849 Papermill Road  
Coshocton, OH 43812**

and

**THE YOUNGSTOWN BELT RAILROAD  
COMPANY, Individually and d/b/a The Ohio  
Central Railroad System, an unincorporated  
and unregistered association  
c/o William A. Strawn II, Statutory Agent  
47849 Papermill Road  
Coshocton, OH 43812**

and

**THE MAHONING VALLEY RAILWAY  
COMPANY, Individually and d/b/a The Ohio  
Central Railroad System, an unincorporated  
and unregistered association  
c/o William A. Strawn II, Statutory Agent  
47849 Papermill Road  
Coshocton, OH 43812**

**Defendants.**

**Plaintiffs, Allied Erecting and Dismantling Company, Inc. ("Allied Erecting") and Allied  
Industrial Development Corporation ("Allied Industrial") (hereinafter collectively referred to as  
"Allied"), by their attorneys, file this First Amended Complaint under Civ. R. 14(A) seeking  
declaratory and injunctive relief, as well as monetary damages, against Defendants, the various  
named Ohio corporations doing business as The Ohio Central Railroad System (hereinafter  
collectively referred to as "Ohio Central"), upon causes of action of which the following are  
statements:**

### **THE PARTIES**

1. Allied Erecting is a corporation organized and existing under the laws of the State of Ohio, with a principal place of business at 2100 Poland Avenue, Youngstown, Ohio 44502.

2. Allied Industrial is a corporation organized and existing under the laws of the State of Ohio, with a principal place of business at 2100 Poland Avenue, Youngstown, Ohio 44502 (the "Allied Property").

3. Allied is informed, believes and therefore avers that The Ohio Central Railroad System is an unincorporated and unregistered association of ten railroads that operate throughout East Central and North-Eastern Ohio and in the Pittsburgh, Pennsylvania area., with a principal place of business at 47849 Papermill Road, Coshocton, Ohio 43812.

4. Allied is informed, believes and therefore avers that Ohio Central Railroad, Inc. is a corporation organized and existing under the laws of the State of Ohio, with a registered agent at 47849 Papermill Road, Coshocton, Ohio 43812.

5. Allied is informed, believes and therefore avers that Ohio & Pennsylvania Railroad Company, one of the ten railroads within The Ohio Central Railroad System, is a corporation organized and existing under the laws of the State of Ohio, with a registered agent at 47849 Papermill Road, Coshocton, Ohio 43812.

6. Allied is informed, believes and therefore avers that The Warren & Trumbull Railroad Company, one of the ten railroads within The Ohio Central Railroad System, is a corporation organized and existing under the laws of the State of Ohio, with a registered agent at 47849 Papermill Road, Coshocton, Ohio 43812.

7. Allied is informed, believes and therefore avers that Youngstown & Austintown Railroad, Inc., one of the ten railroads within The Ohio Central Railroad System, is a corporation



organized and existing under the laws of the State of Ohio, with a registered agent at 47849 Papermill Road, Coshocton, Ohio 43812.

8. Allied is informed, believes and therefore avers that Youngstown Belt Railroad Company, one of the ten railroads within The Ohio Central Railroad System, is a corporation organized with a registered agent at 47849 Papermill Road, Coshocton, Ohio 43812.

9. Allied is informed, believes and therefore avers that The Mahoning Valley Railroad Company, one of the ten railroads within The Ohio Central Railroad System, is a corporation organized and existing under the laws of the State of Ohio, with a principal place of business at 47849 Papermill Road, Coshocton, Ohio 43812.

#### **THE LTV EASEMENT**

10. By easement agreement dated May 6, 1993 (the "LTV Easement Agreement"), Allied Industrial granted, inter alia, a perpetual, non-exclusive railroad easement to LTV Steel Company, Inc. ("LTV") in connection with certain real property LTV conveyed to Allied Industrial because LTV owned other real property adjacent to, and in the vicinity of, the property it conveyed to Allied Industrial. The LTV Easement Agreement is attached hereto as Exhibit I and is incorporated herein by reference.

11. The Railroad Easement set forth in the LTV Easement Agreement allowed LTV to "operate, use, maintain, repair, restore, replace, and abandon (at LTV's sole cost and expense) the railroad tracks and related equipment" for the intended purpose of running rail cars on various specifically identified tracks located on the Allied Property.

12. Allied is informed, believes and therefore avers that LTV subsequently conveyed all of its right, title and interest in the LTV Easement Agreement to Ohio Central and, therefore, Ohio Central is now the successor-in-interest to, and/or assignee of, LTV and, as such, is entitled

to only those limited rights and privileges as LTV possessed arising from the LTV Easement Agreement.

### **THE P&LE EASEMENT**

13. By Easement Agreement dated September 17, 1993 (the "P&LE Easement Agreement"), Allied Erecting granted, inter alia, a perpetual non-exclusive easement to Pittsburgh Lake Erie Properties, Inc. ("P&LE") for "railroad operations" in connection with certain real property P&LE conveyed to Allied Erecting (P&LE's main line, including land between Survey Station 45+00± in the City of Struthers, Survey Station 153+00± in the city of Youngstown). The P&LE Easement Agreement is attached hereto as Exhibit 2 and is incorporated by reference.

14. Allied is informed, believes and therefore avers that Ohio Central is an assignee and/or successor-in-interest by and through P&LE of certain limited railroad easement rights arising from the P&LE Easement Agreement.

### **VIOLATIONS OF THE LTV AND P&LE EASEMENTS**

15. In violation of the limited and non-exclusive LTV Easement Agreement and the P&LE Easement Agreement, Ohio Central has continually held, stored, and/or otherwise impermissibly stopped rail cars on various railroad tracks on the Allied Property in a manner that: (1) adversely impacts not only Allied's ability to utilize these tracks, but also its current operations and its intended development plans, (2) allows hazardous contents of rail cars containing, inter alia, oil, chemicals and/or untarped construction and demolition debris to contaminate the Allied Property, and (3) creates an attractive nuisance to vagrants and vandals.

16. Further, Ohio Central is holding, storing and/or otherwise impermissibly stopping its cars on railroad tracks of Allied upon which it has no easement rights whatsoever and has damaged Allied's rail, bumpers, and other property.

17. In fact, contrary to the limited easement right it possesses, Ohio Central has wrongfully taken dominion and control of Allied's Property and is using it as a transfer point or switchyard, as if it were Ohio Central's own property.

18. Allied has repeatedly requested Ohio Central to cease holding, storing and/or otherwise impermissibly stopping rail cars on the Allied Property pursuant to the non-exclusive LTV Easement Agreement and the P&LE Easement Agreement, but Ohio Central has continually neglected, failed, and refused to cease such activities on the Allied Property.

19. In particular, and most recently by letter dated August 9, 2005 issued by its counsel, Allied demanded that Ohio Central's blatant continued and unjustified breach of the easement agreements - and willful trespass - cease immediately. This letter, like its earlier requests, was ignored by Ohio Central. A true and correct copy of Allied's August 9, 2005 letter is attached hereto as Exhibit 3.

20. Allied has performed all required conditions precedent to bringing this lawsuit.

### **COUNT I**

#### **MISUSE/ABUSE/OVERBURDENING OF NON-EXCLUSIVE RAILROAD EASEMENTS**

21. All of the foregoing averments are incorporated by reference herein as if set forth in full.

22. Ohio Central, without right, authorization or justification, has continually held, stored, and/or otherwise impermissibly stopped rail cars on various rail lines on the Allied Property, without Allied's permission or authority, and directly contrary to its repeated requests to cease and desist.

23. Ohio Central's continued misuse, abuse, and overburdening of the easement rights bestowed by the LTV Easement Agreement and the P&LE Easement Agreement have caused,

and will continue to cause, Allied to endure: (1) significant adverse impacts on its ability to utilize its own rail lines, as well as to its operations and its intended development plans for the property; (2) contamination of the Allied Property caused by the contents of impermissibly parked and/or stored rail cars; (3) damage and potential liability caused by the attractive nuisance created thereby; and (4) damage to Allied's rail, bumpers, and other property.

24. Unless Ohio Central's misuse, abuse, and over burdening of the LTV Easement Agreement and the P&LE Easement Agreement is enjoined by this Court, Ohio Central will continue to cause irreparable harm to Allied for which there is no adequate remedy at law.

WHEREFORE, Plaintiffs, Allied Erecting and Dismantling Company, Inc. and Allied Industrial Development Corporation, respectfully request that this Honorable Court grant a preliminary and permanent injunction ordering Ohio Central to cease and desist holding, storing and/or otherwise impermissibly stopping rail cars on the rail lines on the Allied Property, so as to permit Allied to fully utilize its rail lines, perform its operations and proceed with its development plans without undue interference, and utilize and enjoy its property free from both the contamination and the attractive nuisance caused by Ohio Central's wrongful and unjustified conduct.

## **COUNT II**

### **UNREASONABLE USE OF EASEMENTS**

25. All of the foregoing averments of this First Amended Complaint are incorporated herein by reference as if set forth in full.

26. Ohio Central has unreasonably held, stored and/or otherwise impermissibly stopped rail cars on the railroad tracks on the Allied Property in violation of the LTV Easement Agreement and the P&LE Easement Agreement.

27. Ohio Central's conduct unreasonably exceeds the proper and authorized scope of the easement agreements and is inconsistent with their purpose and character.

28. Ohio Central's activities have caused injury to the Allied Property and have interfered with Allied's use and enjoyment of its property and have damaged Allied's property.

WHEREFORE, Plaintiffs, Allied Erecting and Dismantling Company, Inc. and Allied Industrial Development Corporation, respectfully request judgment in their favor and against Ohio Central in a currently undetermined amount, plus interest, costs and such other and further relief as this Court deems just and appropriate.

### **COUNT III**

#### **UNJUST ENRICHMENT & DEPRIVATION OF PROPERTY**

29. All of the foregoing averments of this First Amended Complaint are incorporated herein by reference as if set forth in full.

30. Ohio Central, without right, authorization, or justification, has continually stopped, held and/or stored rail cars on various rail lines on the Allied Property, including rail lines over which it has no easement rights and has damaged Allied's property.

31. Ohio Central's conduct and wrongful exercise of dominion and control over Allied's Property has caused Allied to be deprived of the beneficial use and enjoyment of its own property.

32. Ohio Central has not (1) paid Allied for the right to hold or store rail cars on the Allied Property, (2) disgorged the amounts it has received from third parties for such activities, or (3) otherwise reimbursed Allied for the deprivation of the beneficial use and enjoyment of its property.

33. Ohio Central's wrongful and unjustified conduct has permitted it to be unjustly enriched, to Allied's detriment.

LAW OFFICES OF NADLER & BURDMAN CO LPA YOUNGSTOWN, OHIO

WHEREFORE, Plaintiffs, Allied Erecting and Dismantling Company, Inc. and Allied Industrial Development Corporation, respectfully request judgment in their favor and against Ohio Central in an amount to be determined at trial, plus interest, costs and such other and further relief as this Court deems just and appropriate.

**COUNT IV**

**TRESPASS AB INITIO**

34. All of the foregoing averments of this First Amended Complaint are incorporated herein by reference as if set forth in full.

35. Ohio Central has continually entered upon the Allied Property for the purpose of holding, storing and/or impermissibly stopping rail cars on rail lines on the Allied Property, including rail lines over which it has no easement rights, without Allied's consent and against Allied's will, and has damaged Allied's property.

36. Such use of the Allied Property is not a right conferred upon Ohio Central by the LTV Easement Agreement or the P&LE Easement Agreement and, as such, constitutes a trespass on the Allied Property.

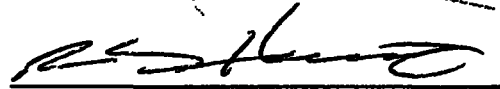
37. Ohio Central has also stored and/or maintained hazardous, toxic and/or regulated substances and materials on the Allied Property in such a manner as to contaminate the Allied Property, without Allied's consent and against Allied's will.

38. Storage of substances and materials on the Allied Property is not a right conferred upon Ohio Central by the LTV Easement Agreement or the P&LE Easement Agreement and, as such, constitutes a trespass on the Allied Property.

39. Ohio Central's repeated and wrongful trespasses have caused damage to the Allied Property and have deprived Allied of the beneficial use and enjoyment of its property.

WHEREFORE, Plaintiffs, Allied Erecting and Dismantling Company, Inc. and Allied Industrial Development Corporation, respectfully request judgment in their favor and against Ohio Central in an amount to be determined at trial, plus interest, costs and such other and further relief as this Court deems just and appropriate.

Respectfully submitted,



Jay M. Skolnick, Esquire

No. 0006767

Robert S. Hartford, Jr., Esquire

No. 0020067

Nadler Nadler & Burdman Co., LPA

20 Federal Plaza West, Suite 600

Youngstown, OH 44503- 1423

Telephone No.: (330) 744-0247

Fax No.: (330) 744-8690

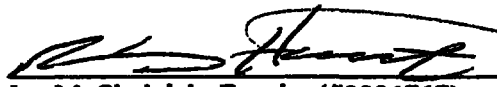
E-mails: [jmskolnick@nnblaw.com](mailto:jmskolnick@nnblaw.com) and  
[rsh2@nnblaw.com](mailto:rsh2@nnblaw.com)

Attorneys for Plaintiffs

Allied Erecting and Dismantling Company, Inc.  
and Allied Industrial Development Corporation

**JURY DEMAND**

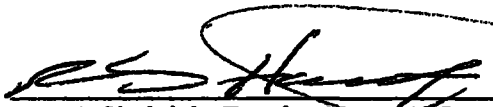
Plaintiffs demand that this case be tried by a jury.

  
Jay M. Skolnick, Esquire (#0006767)  
Robert S. Hartford, Esquire (#0020067)  
Nadler Nadler & Burdman Co., L.P.A.  
Attorneys for Plaintiffs

**REQUEST FOR SERVICE**

**TO THE CLERK:**

Please serve Summons and a copy of the First Amended Complaint upon each of the Defendants at the addresses listed for them in the caption of the First Amended Complaint by certified United States mail, return receipt requested, as provided for in the Ohio Rules of Civil Procedure.

  
Jay M. Skolnick, Esquire (#0006767)  
Robert S. Hartford, Esquire (#0020067)  
Nadler Nadler & Burdman Co., L.P.A.  
Attorneys for Plaintiffs

C: My Documents RSII-Allied-Ramun Ohio Central-Complaint-Amended-j0959305.doc



## **EXHIBIT 1**

EASEMENT AGREEMENT

LTV STEEL COMPANY, INC. ("LTV"), a New Jersey corporation, and ALLIED INDUSTRIAL DEVELOPMENT CORPORATION ("ALLIED"), an Ohio corporation are parties to a Sale And Purchase Agreement dated June 25, 1992 ("Agreement"), and this Easement Agreement is made and entered into pursuant thereto.

WITNESSETH

WHEREAS, LTV conveyed to Allied certain real property (the "ALLIED PROPERTY") located in Youngstown, Mahoning County, Ohio, by deed recorded in Volume \_\_\_, page \_\_\_ of the Deed Records of Mahoning County, Ohio; and

WHEREAS, LTV owns real property adjacent to and in the vicinity of the Allied Property (the "LTV PROPERTY"); and

WHEREAS, the Agreement provides that LTV and ALLIED shall provide for certain easements for the purposes and upon the terms set forth below.

NOW THEREFORE, Allied, its successors and assigns, for valuable consideration hereby grants to LTV, its successors and assigns, perpetual, non-exclusive easements appurtenant to the Allied Property as follows:

I. ACCESS EASEMENT

1. An easement on, over and across Allied Property, from the existing twenty foot (20') Drive Easement (recorded at Volume 182, Page 442 located on Parcel "B" at LTV Stop #7, extending easterly, then northeasterly across the eastern

most portion of Parcel "A" to the Conrail Hazelton Yards) to access railroad tracks, electrical lines, sanitary sewer lines, the lift station, water lines and telephone lines, all in conformity with the easements hereinafter granted, for the operation, use, maintenance, repair, restoration, replacement and abandonment of such equipment and materials located within the hereinafter granted easements.

## II. RAILROAD EASEMENT

2. An easement to operate, use, maintain, repair, restore, replace and abandon (at LTV's sole cost and expense) the railroad tracks and related equipment located on the property that the Mahoning Valley Railway Company leases from LTV located along the north property line of Parcel "A", along the south shore of the Mahoning River, that extend from the west property line of Parcel "A", easterly to Conrail's Hazelton Yards. These tracks are known as the No. 2 and No. 3 Mains.

3. An easement to operate, use, maintain, repair, restore, replace and abandon (at LTV's sole cost and expense) the railroad tracks and related equipment located on the property that the Mahoning Valley Railway Company leases from LTV located along the south property line of Parcel "A", from the west property line of Parcel "A", easterly, and then northeasterly to Conrail's Hazelton Yards. The tracks numbered 220, 239, 240 and No. 4 Main, then continue in a

southeasterly direction on Conrail's property until they enter upon the easternmost portion of Parcel "B", and continue on Parcel "B" for approximately seven hundred feet (700) to the east property line. The tracks on Parcel "B" are the No. 1 Main and the Heckett track.

The easement granted in numbered paragraphs 2 and 3 above are shown on the drawing attached hereto as Exhibit A and numbered 2 and 3.

### III. ELECTRICAL EASEMENT

4. An easement on, over and across Allied Property for the operation, use, maintenance, repair, restoration, replacement and abandonment (at LTV's sole cost and expense) of the electrical wires and poles that provide electricity to service the lift station located in the southwest corner of Parcel "A". The electrical wires and poles run from the west property line of Parcel "A" easterly approximately one hundred fifty feet (150') to the lift station.

The easement granted above is shown on Exhibit A and is numbered 4.

IV. SANITARY SEWERS AND LIFT STATION

5. An easement on, over, across and under Allied Property for the operation, use, maintenance, repair, restoration, replacement and abandonment (at LTV's sole cost and expense) of the lift station and related sewer lines and equipment located in the southwest corner of Parcel "A".

The easement granted above is shown on Exhibit A and is numbered 5.

V. OHIO WATER SERVICE LINE

6. An easement, on, over, across and under Allied Property for the operation, use, maintenance, repair, restoration, replacement and abandonment (at LTV's sole cost and expense) of the Ohio Water Service Line that is located underground on Parcel "A", beginning approximately half way between LTV Stop #7 and Power's Run on the northerly side of the Mahoning Valley Railway Company's Tracks numbered 220, 239, 24 and No. 4 Main and continuing westerly to the west property line of Parcel "A".

The easement granted above is shown on Exhibit A and is numbered 6.

VI. FUTURE EASEMENTS

7. LTV, its successor and assigns hereby reserves from Allied, its successors and assigns;
- a.) an easement for roadway access that will provide ingress and egress from the new Center Street Bridge, as it will be located upon its completion, to LTV Property which abuts Parcel "A" to the west; and
  - b.) an easement for rail or roadway purposes to provide access to the east end of an abandoned railroad bridge, if the bridge is ever put back into service as either a railroad bridge or if it is converted to accommodate vehicular traffic. The easement would be approximately thirty-six feet (36') wide measured from the north property line of Parcel "A" and would begin at the east end of the abandoned bridge and continue southeasterly to the east property line of Parcel "A".

The easements granted above are shown on Exhibit A and numbered 7-A and 7-B.

FUTURE COOPERATION

LTV and Allied agree to relocate (or vacate if appropriate) any of the aforegranted easements to facilitate the development of either LTV Property or Allied Property, provided any such

relocation or vacation will not adversely interfere with either parties' then existing operations or access to their properties.

The easements granted herein shall be binding upon and enforceable against and shall inure to the benefit of LTV and Allied and to each of its successors and assigns.

TO HAVE AND TO HOLD each of the above granted easements, for the purposes expressed herein.

IN WITNESS WHEREOF, LTV STEEL COMPANY, INC. and ALLIED INDUSTRIAL DEVELOPMENT CORPORATION by their duly authorized representatives, have signed this Easement Agreement the 6<sup>th</sup> day of May, 1993.

Signed and acknowledged  
in the presence of:

Kenneth R. Yantek  
Paul A. Fleener

LTV STEEL COMPANY, INC.

By:

K. Skurich  
Title: Vice President

James L. Garrison  
John F. [unclear]

ALLIED INDUSTRIAL DEVELOPMENT CORPORATION

By:

John L. Garrison  
Title: President

**ACKNOWLEDGEMENTS**

STATE OF OHIO            )  
                              ) SS:  
COUNTY OF CUYAHOGA    )

BEFORE ME, a Notary Public in and for said County and State, personally appeared J. C. SKUREK, Vice President of LTV STEEL COMPANY, INC., who acknowledged that he did sign the foregoing Easement Agreement as the duly authorized officer of said corporation and that the same was its free corporate act and deed and his free act and deed individually and as such officer.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 6<sup>th</sup> day of MAY, 1993.

Kenneth R. Yantek  
Notary Public

(Notarial Seal)

My commission expires: N/A

STATE OF OHIO            )  
                              ) SS:  
COUNTY OF MAHONING    )

KENNETH R. YANTEK, Attorney At Law  
Notary Public - State of Ohio  
My commission has no expiration date.  
Section 147.03 R. C.

BEFORE ME, a Notary Public in and for said County and State, personally appeared JOHN R. RAMON, PRESIDENT of ALLIED INDUSTRIAL DEVELOPMENT CORPORATION, who acknowledged that he did sign the foregoing Easement Agreement as the duly authorized representative of said corporation and that the same was its free act and deed and his free act and deed individually and as such representative.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 10<sup>th</sup> day of May, 1993.

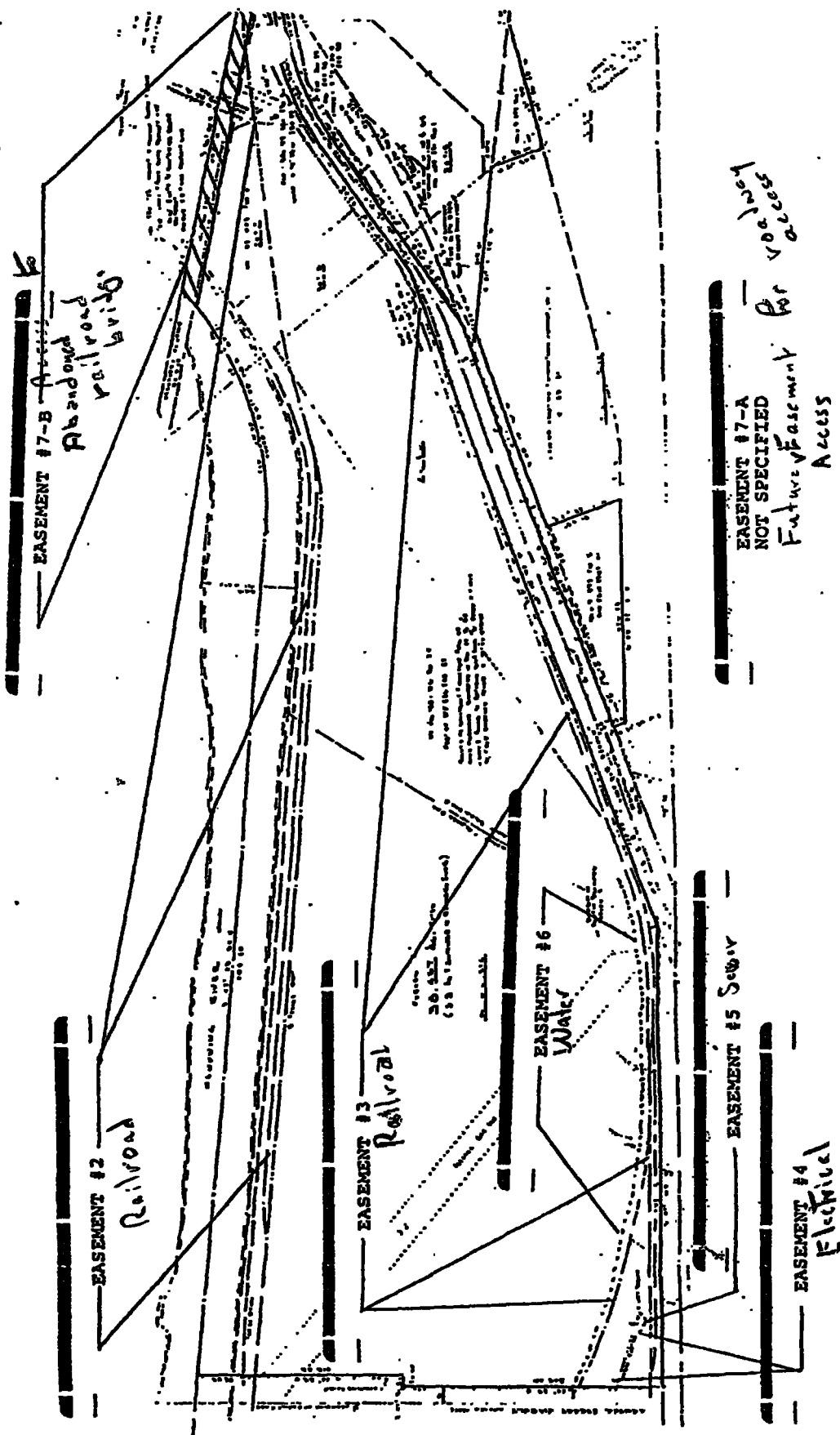
Sandra S. Trematte  
Notary Public.

(Notarial Seal)

My commission expires: My Commission Expires 6.30.93

SANDRA S. TREMATTE, Notary P  
State of Ohio  
My Commission Expires 6.30.93







**EXHIBIT 2**

**COPY**

EASEMENT AGREEMENT

This EASEMENT AGREEMENT, made this 17 day of SEPTEMBER, 1993, between the ALLIED ERECTING AND DISMANTLING COMPANY, INC., an Ohio Corporation, hereinafter referred to as "Grantor", and PITTSBURGH & LAKE ERIE PROPERTIES, INC., formerly known as The Pittsburgh and Lake Erie Railroad Company, a Delaware Corporation, hereinafter referred to as "Grantee".

NOW THEREFORE, for and in consideration of TEN DOLLARS (\$10.00), payable the first day of each year, does hereby, insofar as Grantor's title permits, grant bargain and convey unto Grantee, its successors and assigns, a perpetual, non-exclusive easement over that portion of the main line acquired by the Grantor herein by Deed bearing the same date as this Easement Agreement, between Survey Station 45+00± to a connection with the former Youngstown & Southern Railway Company in the vicinity of Survey Station 146+00± a distance of approximately 1.913 miles, for the sole purpose of providing railroad operations thereover as a part of the operation of the former Youngstown & Southern Railway system.

The aforesaid easement is granted, delivered and accepted, however, upon the following terms and conditions which, are mutually agreed to by the parties hereto:

1. Railroad operations over and upon the easement shall be conducted by such corporate party or parties to whom Grantee has or may assign the operation of The Youngstown and Southern Railway pursuant to authority granted by the Interstate Commerce Commission. As of the date hereof, said operations are and will be conducted in accordance with the applicable terms of that certain LEASE dated April 19, 1993, between Grantor, The Youngstown and Southern Railway Company and PL&W Railroad, Inc.
2. In the event any conditions exists upon Grantor's property or Grantor's operations adjacent to the easement which adversely affect safe and normal railroad operations over the easement, Grantor shall take steps, after verbal notification followed by written confirmation, with due diligence to make such changes in its property or operations as are necessary to permit safe and normal railroad operations to continue.
3. In the event that Grantor desires to occupy all or any portion of the easement area with its own facilities and/or operations, Grantor shall, give Grantee written notice of the such event, and shall, at Grantor's expense, provide a substitute comparable route and

tracks satisfactory to Grantee and its assigns, at another location upon and over Grantor's property, for the continued operation of a railroad between the beginning and ending points of the easement granted hereinabove. Upon the provision of a substitute easement, the provisions of the aforesaid Lease of April 19, 1993 shall apply to continued railroad operations thereover.

4. Upon any future abandonment of railroad operations over the easement pursuant to authority granted by the Interstate Commerce Commission or other applicable authority, the easement granted herein and this Easement Agreement shall be terminated.
5. The terms and conditions of this Easement Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective legal representatives and successors and assigns.
6. Grantee agrees to pay all costs and fees in conjunction with filing or recording of this instrument in the office of Public Records of Mahoning County, Ohio.

IN WITNESS WHEREOF, the Grantor and Grantee, intending to be legally bound, have caused this instrument to be duly executed the day and year first above written.

ALLIED ERECTING AND DISMANTLING COMPANY, INC.

ATTEST:

Louise V. Ramon  
Secretary

By

John R. Ramon  
President

PITTSBURGH & LAKE ERIE PROPERTIES, INC.

ATTEST:

Nancy L. Zmencik  
Secretary

By

Gordon E. Henschel  
President

STATE OF PENNSYLVANIA

)  
) SS.  
)

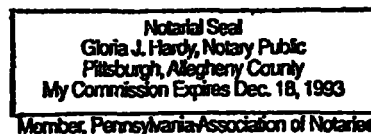
COUNTY OF ALLEGHENY

On this 17 day of September 1993, before me, the undersigned officer, a Notary Public, personally appeared, John R. Ramon who acknowledged himself to be \_\_\_\_\_ President of ALLIED ERECTING AND DISMANTLING COMPANY, INC., and that he, being authorized to do so, executed the foregoing instrument on behalf of the said ALLIED ERECTING AND DISMANTLING COMPANY, INC., for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this 17<sup>th</sup> of September, 1993.

Gloria J. Hardy  
Notary Public

My Commission expires: \_\_\_\_\_





STATE OF PENNSYLVANIA

)

) SS.

COUNTY OF ALLEGHENY

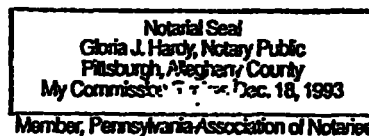
)

On this 17 day of September 1993, before me, the undersigned officer, a Notary Public, personally appeared, Gordon E. Neuenschwander, who acknowledged himself to be President of PITTSBURGH & LAKE ERIE PROPERTIES, INC., and that he, being authorized to do so, executed the foregoing instrument on behalf of the said PITTSBURGH & LAKE ERIE PROPERTIES, INC., for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this 17 of September, 1993.

Gloria J. Hardy  
Notary Public

My Commission expires: \_\_\_\_\_



### **EXHIBIT 3**



Eckert Seamans Cherin & Melillo, LLC  
U.S. Steel Tower  
600 Grant Street, 44th Floor  
Pittsburgh, PA 15219

TEL 412 566 6000  
FAX 412 566 6099  
www.eckertseamans.com

Christopher R. Opalinski  
412-566-5963  
copalinski@eckertseamans.com

**Fax: 330-744-9095**

August 9, 2005

Mr. Terry Feichtenbiner  
General Manager, Northern Lines Division  
The Ohio Central Railroad System  
1290 Poland Avenue  
Youngstown, OH 44502

Re: Allied Erecting and Dismantling Company, Inc.;  
Ohio Central Non-Exclusive Easement

Dear Mr. Feichtenbiner:

Please be advised that our firm represents Allied Erecting and Dismantling Company, Inc. ("Allied") and that Allied has consulted with us regarding Ohio Central's blatant and continued refusal to cease parking and/or storing rail cars on Allied's property at 2100 Poland Avenue in Youngstown, Ohio.

As you are aware, Ohio Central has a non-exclusive easement to run cars over the rail lines on Allied's property. However, it cannot store or park cars on these lines, use these lines as a transfer point or switchyard, or otherwise use Allied's property as if it were Ohio Central's own property. Nevertheless, in violation of the limited easement rights it possesses, Ohio Central has been storing and parking cars on Allied's property, adversely impacting both Allied's ability to utilize these lines, its operations, and its development plans for the property. Moreover, certain of the cars stored in Allied's property are oil or chemical tanker cars, or cars containing untarped construction and demolition debris, the run-off of which is contaminating Allied's property. The storage of these cars on Allied's property also constitutes an attractive nuisance to vagrants and vandals.

Allied and its President, Mr. John Ramun, have repeatedly advised various representatives of Ohio Central to cease storing cars on these lines, consistent with the non-exclusive easement rights you possess. Ohio Central evidently has chosen to intentionally ignore Allied's reasonable requests. Allied will no longer tolerate Ohio Central's blatant disregard of its limited easement rights and its desire to use Allied's property without permission or payment.

You are hereby advised that Allied has authorized our firm to immediately commence appropriate legal proceedings to both enjoin Ohio Central from continuing to trespass on its property, as well as to recover damages for its tortious conduct and/or an accounting of all rent, fees or other revenues collected while improperly using Allied's property. While Allied hopes it

**ECKERT  
SEAMANS**

Mr. Terry Feichtenbinder  
August 9, 2005  
Page 2

will not be forced to take such action, we intend to promptly and aggressively pursue these actions on Allied's behalf in the event Ohio Central refuses to comply with Allied's request.

Because Ohio Central has previously disregarded Allied's informal attempts to amicably resolve this matter, I would request that you, or your counsel, confirm in writing within ten (10) days of the date of this letter your intention to cease any further unauthorized storage or parking of cars on Allied's property.

I will await your prompt response.

Very truly yours,



Christopher R. Opalinski

CRO/bjm

cc: Tracy V. Drake (Columbiana County Port Authority) (Fax: 330-386-1122)  
Mr. John Ramun

# EXHIBIT B

# FLETCHER & SIPPEL LLC

ATTORNEYS AT LAW

29 North Wacker Drive  
Suite 910  
Chicago, Illinois 60606-2632

Phone: (312) 252-1500  
Fax: (312) 252-2400  
www.fletcher-sippel.com

MYLES L. TOBIN  
(312) 252-1502  
mtobin@fletcher-sippel.com

November 21, 2006

## VIA FEDERAL EXPRESS

Mr. Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K Street, N.W., Room 700  
Washington, DC 20006

Re: Finance Docket No. 34934  
Eastern States Railroad, LLC—Exemption for Purchase of Lease,  
Agreement to Acquire the Leased Line, and Assignments of Operating  
Rights—Central Columbiana & Pennsylvania Railway, Inc. and  
Columbiana County Port Authority


Dear Secretary Williams:

Enclosed for filing in the above-captioned proceeding are an original and ten copies of the Verified Notice of Exemption of Eastern States Railroad, LLC pursuant to 49 C.F.R. § 1150.31, dated November 21, 2006. A check in the amount of \$1,500, representing the appropriate fee for this filing, and a computer diskette containing the text of the Notice and the *Federal Register* caption summary in MS Word 2000 format are attached.

One extra copy of the Notice and this letter also are enclosed. I would request that you date-stamp those items to show receipt of this filing and return them to me in the provided envelope.

If you have any questions regarding this filing, please feel free to contact me. Thank you for your assistance on this matter.

Respectfully submitted,



Myles L. Tobin  
Attorney for Eastern States Railroad, LLC

Enclosures.

cc: Mr. Richard L. Cox  
Mr. Todd Pickard  
Mr. John Heffner  
Mr. Tracy Drake  
Mr. Harry A. Light

## FLETCHER & SIPPÉL LLC

Mr. James F. Dowden

Mr. James E. Smith

Mr. Lance R. Miller

Mr. Geoffrey B. Treece

Allied Erecting and Dismantling Company, Inc.

Matteson Equipment Company

Mr. William H. Johnson, Norfolk Southern Railway Company, Three Commercial Place,  
Norfolk, Virginia 23510

Attn: Joint Facilities Dept., CSX Transportation, Inc., 500 Water Street, 15th Floor,  
Jacksonville, Florida 32202

BEFORE THE  
SURFACE TRANSPORTATION BOARD

---

FINANCE DOCKET NO. 34934

EASTERN STATES RAILROAD, LLC  
—EXEMPTION FOR PURCHASE OF LEASE, AGREEMENT  
TO ACQUIRE LEASED LINE, AND ASSIGNMENTS OF OPERATING RIGHTS—  
CENTRAL COLUMBIANA & PENNSYLVANIA RAILWAY, INC.  
AND  
COLUMBIANA COUNTY PORT AUTHORITY

---

VERIFIED NOTICE OF EXEMPTION  
OF  
EASTERN STATES RAILROAD, LLC  
PURSUANT TO 49 C.F.R. § 1150.31

Myles L. Tobin  
Michael J. Barron, Jr.  
Fletcher & Sippel LLC  
29 North Wacker Drive  
Suite 920  
Chicago, Illinois 60606-2832  
(312) 252-1500

ATTORNEYS FOR  
EASTERN STATES RAILROAD, LLC

Dated: November 21, 2006



BEFORE THE  
SURFACE TRANSPORTATION BOARD

---

FINANCE DOCKET NO. 34934

EASTERN STATES RAILROAD, LLC  
—EXEMPTION FOR PURCHASE OF LEASE, AGREEMENT  
TO ACQUIRE LEASED LINE, AND ASSIGNMENTS OF OPERATING RIGHTS—  
CENTRAL COLUMBIANA & PENNSYLVANIA RAILWAY, INC.  
AND  
COLUMBIANA COUNTY PORT AUTHORITY

---

VERIFIED NOTICE OF EXEMPTION  
OF  
EASTERN STATES RAILROAD, LLC  
PURSUANT TO 49 C.F.R. § 1150.31

Pursuant to 49 C.F.R. § 1150.31, *et seq.*, Eastern States Railroad, LLC ("ESR"), a non-carrier, hereby files this Verified Notice of Exemption to purchase operating and lease rights (which lease, as amended, includes an agreement on the part of ESR to acquire the leased line) in a bankruptcy proceeding, receive permanent assignments of operating rights on continuous segments of lines connected to the leased line, and pending closing on the purchase of the operating and lease rights and on the permanent assignment of operating rights, receive an interim assignment of operating rights on all these lines pursuant to an Interim Operating Agreement, so that ESR can become a common carrier and commence operations prior to closing of the purchase transaction.

Specifically, ESR will be purchasing operating and lease rights, which lease as amended includes an agreement to acquire the leased line on specified terms. The line is the former Youngstown & Southern Line and runs from Milepost 35.7 in Darlington, Pennsylvania to

Milepost 0.0 in Youngstown, Ohio,<sup>1</sup> which was formerly operated by Central Columbiana & Pennsylvania Railway, Inc. ("CQPA") and is owned by Columbiana County Port Authority ("CCPA"). In addition, at Youngstown, ESR will receive permanent assignments of CQPA's and CCPA's operating rights running east of Milepost 0.0 in Youngstown which, in combination with other rights ESR has obtained, will, *inter alia*, facilitate interchange with Norfolk Southern Railway Company ("NS") and CSX Transportation, Inc. ("CSX"). Pending the closing of the lease and operating rights purchase and of the permanent assignments, ESR has entered into an Interim Operating Agreement with the Trustee of the CQPA for an interim assignment of operating rights on all the lines described herein so that it may become a common carrier and commence operations. All of this trackage is shown on Exhibit A, attached and incorporated herein, and is in Columbiana and Mahoning Counties, Ohio, and Beaver County, Pennsylvania. Based on projected revenues for the ESR, it expects to become and remain a Class III rail carrier after consummation of the transaction proposed herein.

In accordance with the requirements of 49 C.F.R. § 1150.33, ESR submits the following information:

**Name and Address of Applicant:** 49 C.F.R. § 1150.33(a)

The full name and address of the rail carrier applicant herein is as follows:

---

<sup>1</sup> Currently, the Ohio & Pennsylvania Railroad Company operates over this line pursuant to an Interim Operating Agreement with the Trustee of CQPA in the CQPA bankruptcy proceeding, presently pending in the U.S. Bankruptcy Court for the Eastern District of Arkansas in Case No. 04-BK-16887T (the "CQPA Bankruptcy Proceeding"). Ohio & Pennsylvania received interim operating authority from the STB in Finance Docket No. 34632, The Ohio and Pennsylvania Railroad—Acquisition and Operation Exemption—Rail Lines of Columbiana County Port Authority in Mahoning and Columbiana Counties, OH, and Beaver County, PA, decision served December 21, 2004. Pursuant to an order of the Bankruptcy Court in the CQPA Bankruptcy Proceeding, the Ohio & Pennsylvania Interim Operating Agreement will terminate upon the effective date of this Notice of Exemption.

Eastern States Railroad, LLC  
C/O Total Waste Logistics, LLC  
7131 Akron Canfield Road  
Canfield, Ohio 44406

**Applicant's Representative: 49 C.F.R. § 1150.33(b)**

ESR's representative to whom correspondence regarding this transaction should be sent is as follows:

Myles L. Tobin  
Fletcher & Sippel LLC  
29 North Wacker Drive  
Suite 920  
Chicago, Illinois 60606-2832  
(312) 252-1500

**Statement Concerning Agreement: 49 C.F.R. § 1150.33(c)**

CQPA, through the Trustee in the CQPA Bankruptcy and pursuant to an order of the Bankruptcy Court in the CQPA Bankruptcy Proceeding, has agreed to sell its operating and lease rights on CCPA as set forth in an agreement dated April 6, 2000, as amended ("CCPA Agreement") to ESR. As part of this purchase of lease and operating rights, ESR has entered into an agreement with CCPA to amend the CCPA Agreement so that, subject to certain specified pre-conditions, ESR agrees to acquire the line from Milepost 0.0 in Youngstown to Milepost 35.7 in Darlington. In addition, as part of the transaction with ESR, CQPA, through the Trustee, and CCPA are also assigning to ESR all agreements and operating rights necessary or useful to enable ESR to operate from milepost 0.0 to interchanges with NS and CSX in Youngstown which agreements and operating rights are made part of this exemption including, without limitation, the following agreements and operating rights:<sup>2</sup>

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<sup>2</sup> On motion of the Trustee in the CQPA Bankruptcy with notice thereof given to all relevant parties, on November 15, 2006, the Bankruptcy Court ordered that CQPA, through its Trustee, is authorized and directed to assign its rights under the CCPA Agreement and all operating agreements including, but not limited to, the

(A) Overhead Trackage Rights Agreement dated May 7, 2001 between Ohio & Pennsylvania Railroad Company (which, together with its parent and all affiliates, "OHPA") and CQPA.

(B) Letter Agreement dated November 30, 2001 between OHPA, CQPA and CCPA.

(C) Interchange Agreement dated July 23, 2002, as amended and in effect, among CSX, OHPA and CQPA and Interline Service Agreement, effective date April 1, 2004, between CSX and CQPA.

(D) Land Lease dated August 8, 2003 between CSX and CQPA.

(E) Interchange Agreement dated May 1, 2001, and Interline Service Agreement, effective date October 5, 2004 between CQPA and NS.

(F) Easements granted by Allied Erecting & Dismantling Company, Inc. ("Allied") to The Pittsburgh and Lake Erie Railroad Company ("PLE") by agreements dated June 3, 1992, and November 10, 1993, and easements retained by PLE in deeds dated June 3, 1992, and November 10, 1993, from PLE to Allied (collectively, the "Allied Easements"), which Allied Easements were conveyed by Youngstown and Southern Railway Company (successor-in-interest to PLE) to Railroad Ventures, Inc. ("RVI") by deed dated November 8, 1996, and by RVI to CCPA by deed dated January 23, 2001, and were included in the rights granted to CQPA in the CCPA Agreement, including rights over the C.P. Graham Interlocking, and which collective rights were also conferred on CCPA by order of the Bankruptcy Court dated March 28, 2002 in In re: Pittsburgh & Lake Erie Properties, Inc., Case No. 96-406 (MFW).

(G) Operating Rights Agreement between Matteson Equipment Company (Matteson) and CQPA.

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agreements listed on (A) through (G) on pages 3-4 herein to ESR.

Also, ESR has entered into a further agreement with Matteson dated July 14, 2006 (Matteson Agreement) for operation on certain tracks as shown in Exhibit A, and this agreement is being made a part of this Exemption.

Prior to closing on the lease and operating rights purchase and on the permanent assignment of the agreements and operating rights as described herein, ESR will receive an interim assignment of all these rights and agreements pursuant to an Interim Operating Agreement with the Bankruptcy Trustee so that it can become a common carrier and commence operations while progressing to the closing.

**Operation of the Property: 49 C.F.R. § 1150.33(d)**

ESR will be a common carrier on the tracks between Milepost 35.7 at Darlington, Pennsylvania and Milepost 0.0 at Youngstown, Ohio. Once ESR acquires these rights, it will sublease rights on this segment to the Youngstown & Southeastern Railroad Company, Inc. ("Y&S"), a subsidiary of Indiana Boxcar, Inc.

Y&S will be filing the appropriate Notice of Exemption for the right to operate between Milepost 35.7 and Milepost 0.0. Y&S shall then be the operator on the line and have common carrier status, but ESR will retain its common carrier status on the line between Milepost 0.0 and Milepost 35.7.

For the lines in Youngstown east of Milepost 0.0 that are described on pages 3-5 herein and include the lines described in items (A) through (G) and the Matteson Agreement, ESR shall be the common carrier, but Y&S shall operate on the lines solely as an agent of and in the name of ESR (See, decisions in combined Finance Docket Nos. 34145, Bulkmatic Railroad Corporation—Acquisition and Operation Exemption—Bulkmatic Transport Company, and

34179, ~~Bulkmatic Railroad Corporation—Operation Exemption—Bulkmatic Transport~~  
Company, served November 19, 2002 and May 15, 2003).

Summary of the Transaction: 49 C.F.R. § 1150.33(e)

ESR intends to obtain the interim assignment of all these rights and agreements described herein pursuant to an Interim Operating Agreement and commence operations on November 29, 2006.

CQPA's address is:  
C/O Richard L. Cox, Trustee  
835 Central, Suite 510  
Hot Springs, Arizona 71901

CCPA's address is:  
1250 St. George St.  
East Liverpool, Ohio 43920

Pursuant to the agreements already described herein, ESR shall become a common carrier by rail on a line between 0.0 in Youngstown, Ohio and Milepost 35.7 in Darlington, Pennsylvania, a total of approximately 35.7 miles. In addition, in Youngstown, by virtue of purchase and assignment of operating rights and exercise of existing rights, ESR shall become a common carrier by rail on trackage east of Milepost 0.0 in Youngstown on tracks and/or property owned, starting at Milepost 0.0 and heading east through Youngstown, by OHPA, then by Allied Erecting & Dismantling, over the C. P. Graham Interlocking with NS, then by OHPA again as the tracks cross the Mahoning River, then by Matteson Equipment Company, and finally again by OHPA to a point of connection with CSX and on property leased from CSX.<sup>3</sup> The operating rights through Youngstown east of Milepost 0.0 facilitate, among other things, interchange with CSX and NS. The length of these operating rights east of Milepost 0.0 in Youngstown is approximately 3 miles.

The total route miles that are the subject of this exemption are approximately 38.7 miles.

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<sup>3</sup> OHPA is part of the Ohio Central Railroad System.

**Map: 49 C.F.R. § 1150.33(f)**

Maps showing the tracks that are the subject of this exemption are attached as Exhibit A to this notice.

**Certificate of Compliance: 49 C.F.R. § 1150.33(g)**

A Certificate of Compliance with the provisions of 49 C.F.R. § 1150.33(g) is attached as Exhibit B to this notice.

**Advance Notice: 49 C.F.R. § 1150.32(e)**

The projected annual operating revenue of ESR upon consummation of this transaction does not exceed \$5 million, and, accordingly, the advance notice requirements of 49 C.F.R. § 1150.32(e) are not applicable to this transaction. See Exhibit B hereto.

**Environmental and Historic Preservation Data: 49 C.F.R. § 1105**

Under C.F.R. § 1105.6(c)(2), ESR's proposed operation of the tracks as described herein is exempt from environmental reporting requirements. The proposed transaction will not result in significant changes in carrier operations, i.e., changes that exceed the thresholds established in 49 C.F.R. § 1105.7(e)(4) or (5).

Under 49 C.F.R. § 1105.8(b)(1), ESR's exemption herein is also exempt from historic preservation reporting requirements. The proposed transactions are for the purpose of continued rail operations. Further, Surface Transportation Board approval is required to discontinue or abandon any service, and there are no plans to dispose of or alter properties subject to Board jurisdiction that are fifty years old or older.

**Caption Summary: 49 C.F.R. § 1150.44**

A caption summary in appropriate form is attached as Exhibit C to this notice.

Respectfully submitted,

By: 

Myles L. Tobin

Michael J. Barron, Jr.

Fletcher & Sippel LLC

29 North Wacker Drive, Suite 920

Chicago, Illinois 60606-2832

(312) 252-1500

**ATTORNEYS FOR EASTERN STATES  
RAILROAD, LLC**

Dated: November 21, 2006



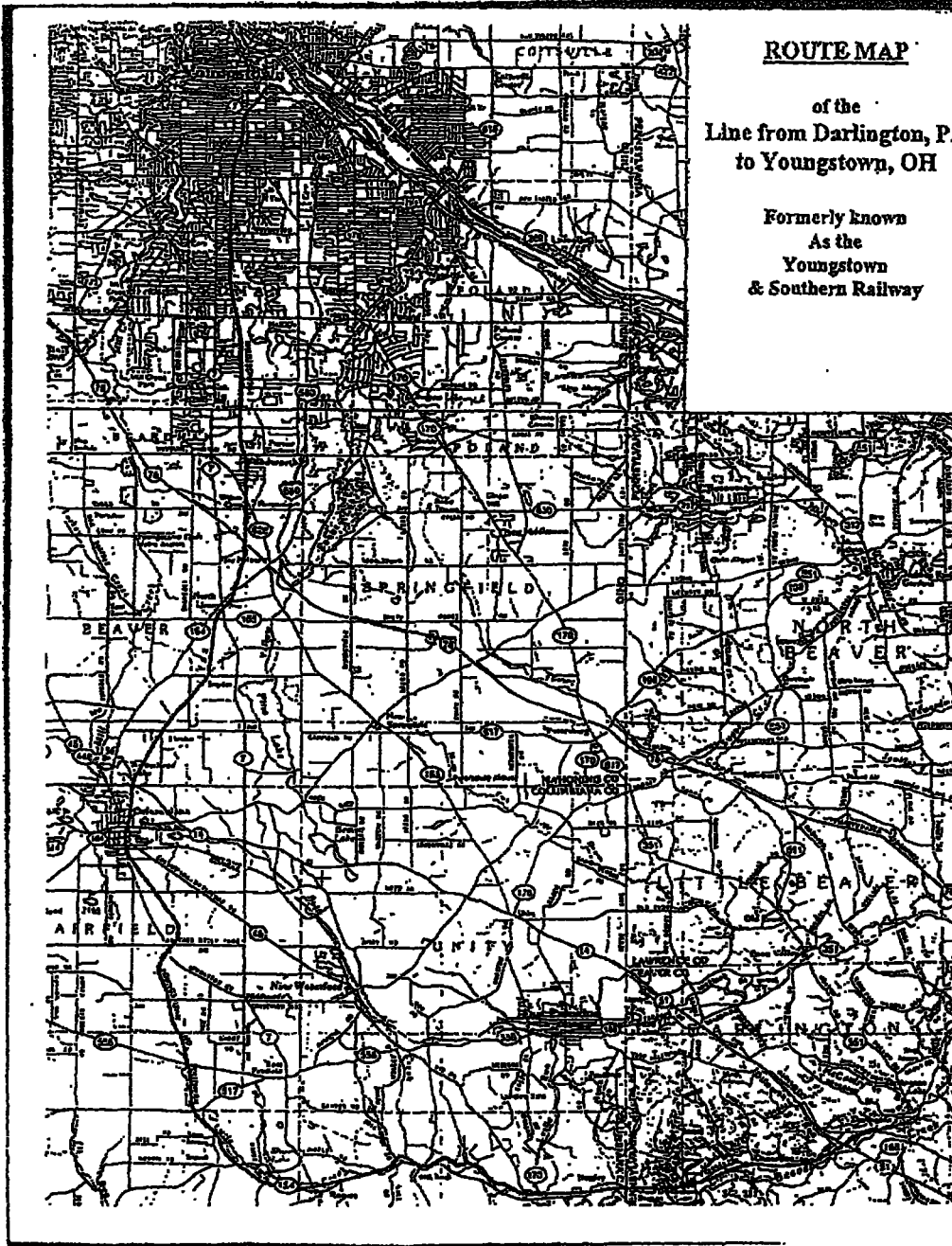
EXHIBIT A

Page 1 of 2

ROUTE MAP

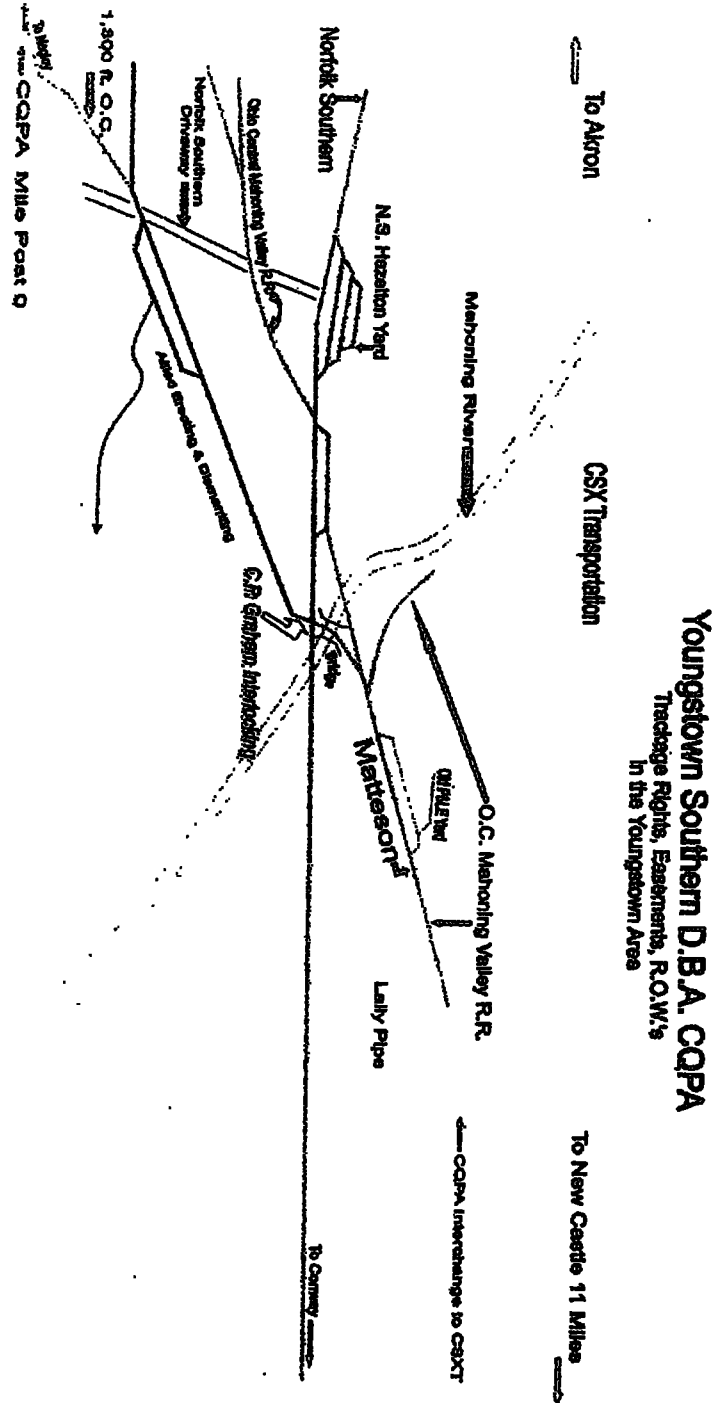
of the  
Line from Darlington, PA  
to Youngstown, OH

Formerly known  
As the  
Youngstown  
& Southern Railway



**EXHIBIT A**

Page 2 of 2

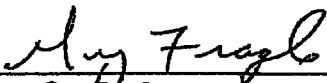


**EXHIBIT B**


**CERTIFICATION**

State of Ohio                     )  
  )  
County of Mahoning            )     ss:

Guy Fragle, being duly sworn, hereby certifies that the projected annual rail revenue of Eastern States Railroad, LLC does not exceed \$5 million and will not result in the creation of a Class II or Class I carrier under the provisions of 49 C.F.R. § 1201(1-1).

  
\_\_\_\_\_  
Guy Fragle  
Managing Director  
Eastern States Railroad, LLC

SUBSCRIBED AND SWORN TO  
before me this 17<sup>th</sup> day  
of November, 2006

  
\_\_\_\_\_  
Notary Public

My Commission expires:

JOHN D. VIGLIO  
NOTARY PUBLIC, STATE OF OHIO  
COMM. EXP. FEB. 27, 2 007

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

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FINANCE DOCKET NO. 34934

EASTERN STATES RAILROAD, LLC  
—EXEMPTION FOR PURCHASE OF LEASE, AGREEMENT  
TO ACQUIRE LEASED LINE, AND ASSIGNMENTS OF OPERATING RIGHTS—  
CENTRAL COLUMBIANA & PENNSYLVANIA RAILWAY, INC.  
AND  
COLUMBIANA COUNTY PORT AUTHORITY

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EASTERN STATES RAILROAD, LLC ("ESR") a non-carrier, has filed a Verified Notice of Exemption to purchase from Central Columbiana & Pennsylvania Railway, Inc. ("CQPA"), through its Bankruptcy Trustee, CQPA's operating and lease rights on Columbiana County Port Authority ("CCPA") as set forth in an agreement dated April 6, 2000, as amended ("CCPA Agreement"). As part of this purchase of operating and lease rights, ESR has entered into an agreement with CCPA which amends the CCPA Agreement so that, subject to certain specified pre-conditions, ESR agrees to acquire the leased line which runs from Milepost 0.0 in Youngstown to Milepost 35.7 in Darlington. In addition, as part of the transaction with ESR, CQPA, through the Trustee, and CCPA are also assigning to ESR all agreements and operating rights necessary or useful to enable ESR to operate from milepost 0.0 to interchanges with NS and CSX in Youngstown, which agreements and operating rights are made part of this exemption including, without limitation, the following agreements and operating rights:

(A) Overhead Trackage Rights Agreement dated May 7, 2001 between Ohio & Pennsylvania Railroad Company (which, together with its parent and all affiliates, "OHPA") and CQPA.

(B) Letter Agreement dated November 30, 2001 between OHPA, CQPA and CCPA.

(C) Interchange Agreement dated July 23, 2002, as amended and in effect, among CSX, OHPA and CQPA and Interline Service Agreement, effective date April 1, 2004, between CSX and CQPA.

(D) Land Lease dated August 8, 2003 between CSX and CQPA.

(E) Interchange Agreement dated May 1, 2001, and Interline Service Agreement, effective date October 5, 2004 between CQPA and NS.

(F) Easements granted by Allied Erecting & Dismantling Company, Inc. ("Allied") to The Pittsburgh and Lake Erie Railroad Company ("PLE") by agreements dated June 3, 1992, and November 10, 1993, and easements retained by PLE in deeds dated June 3, 1992, and November 10, 1993, from PLE to Allied (collectively, the "Allied Easements"), which Allied Easements were conveyed by Youngstown and Southern Railway Company (successor-in-interest to PLE) to Railroad Ventures, Inc. ("RVI") by deed dated November 8, 1996, and by RVI to CCPA by deed dated January 23, 2001, and were included in the rights granted to CQPA in the CCPA Agreement, including rights over the C.P. Graham Interlocking, and which collective rights were also conferred on CCPA by order of the Bankruptcy Court dated March 28, 2002 in In re: Pittsburgh & Lake Erie Properties, Inc., Case No. 96-406 (MFW).

(G) Operating Rights Agreement between Matteson Equipment Company (Matteson) and CQPA.

Also, ESR has entered into a further agreement with Matteson dated July 14, 2006 for operation on certain tracks as shown in Exhibit A, and this agreement is being made a part of this Exemption.

Prior to closing on the lease and operating rights purchase and on the permanent assignment of the agreements and operating rights as described herein, ESR will receive an interim assignment of all these rights and agreements pursuant to an Interim Operating Agreement with the Bankruptcy Trustee so that it can become a common carrier and commence operations while progressing to the closing.

The line over which ESR shall become a common carrier runs between 0.0 in Youngstown, Ohio and Milepost 35.7 in Darlington, Pennsylvania, a total of approximately 35.7 miles. In addition, in Youngstown, by virtue of assignment of operating rights and exercise of existing rights, ESR shall become a common carrier by rail on trackage east of Milepost 0.0 in Youngstown on tracks and/or property owned, starting at Milepost 0.0 and heading east through Youngstown, by OHPA, then by Allied Erecting & Dismantling, over the C. P. Graham Interlocking with NS, then by OHPA again as the tracks cross the Mahoning River, then by Matteson Equipment Company, and finally again by OHPA to a point of connection with CSX and on property leased from CSX.<sup>1</sup> The operating rights through Youngstown east of Milepost 0.0 facilitate, among other things, interchange with CSX and NS. The length of these operating rights east of Milepost 0.0 in Youngstown is approximately 3 miles.

The total route miles that are the subject of this exemption are approximately 38.7 miles.

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<sup>1</sup> OHPA is part of the Ohio Central Railroad System.

ESR intends to obtain the interim assignment of all these rights and agreements described herein pursuant to an Interim Operating Agreement and to commence operations on November 29, 2006.

Comments must be filed with the Board and served on:

Myles L. Tobin  
Fletcher & Sippel LLC  
29 North Wacker Drive  
Suite 920  
Chicago, Illinois 60606-2832  
(312) 252-1500

This Notice is filed under 49 C.F.R. § 1150.31. If this Notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Dated: \_\_\_\_\_, 2006

By the Board

Vernon A. Williams  
Secretary

**VERIFICATION**

State of Ohio                    )  
                                      )  
County of Mahoning            )       ss:

Guy Fragle, being duly sworn, deposes and says that he is Managing Director of Eastern States Railroad, LLC, that he has read the foregoing Notice of Exemption and knows the facts asserted therein, and that the same are true as stated.

  
\_\_\_\_\_  
Guy Fragle  
Managing Director  
Eastern States Railroad, LLC

SUBSCRIBED AND SWORN TO  
before me this 17<sup>th</sup> day  
of November, 2006

  
\_\_\_\_\_  
Notary Public

My Commission expires:

JOHN D. VIGLIO  
NOTARY PUBLIC, STATE OF OHIO  
COMM. EXP. FEB. 27, 2007



# EXHIBIT C

IN THE COURT OF COMMON PLEAS  
MAHONING COUNTY, OHIO

ALLIED ERECTING AND DISMANTLING  
CO., INC., et al.

Plaintiffs

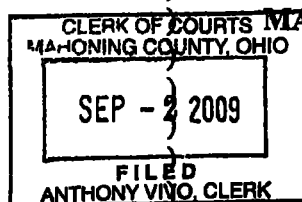
vs.

THE OHIO CENTRAL RAILROAD  
SYSTEM, et al.

Defendants

CASE NO. 2006 CV 00181

JUDGE MAUREEN SWEENEY  
MAGISTRATE DENNIS SARISKY



MAGISTRATE'S DECISION

This matter is before the Court on Defendants' Motion to Dismiss or in the Alternative Refer to the Surface Transportation Board ("Motion to Dismiss"). Plaintiffs filed a Memorandum in Opposition to the Motion to Dismiss. Defendants filed a Reply in Support of Motion to Dismiss. Oral arguments were held in this matter on July 27, 2009. The Court, being fully advised of the facts and evidence of the case and the relevant law, finds that Defendants' Motion to Dismiss is well taken. This Case to be stayed pending referral to the Surface Transportation Board for resolution of the issues outlined below

**I. FINDINGS OF FACTS**

On May 6, 1993, Plaintiffs granted a perpetual non-exclusive railroad easement ("the LTV Easement") to LTV Steel Company, Inc. ("LTV") that allowed LTV to "operate, use, maintain, repair, restore, replace, and abandon" the subject railroad tracks and related equipment for the purpose of running rail cars on various specifically identified tracks located on Plaintiffs' property. According to the Complaint, LTV subsequently assigned its right, title and interest in

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the LTV Easement to Defendants, entitling Defendants to the rights and privileges as set forth in the LTV Easement agreement.

Additionally, the Complaint alleges that, on September 17, 1993, Plaintiffs granted a perpetual non-exclusive railroad easement ("the PLE Easement") to Pittsburgh Lake Erie Properties, Inc. ("PLE") for "railroad operations" on Plaintiffs' property. Similarly, the Complaint states that PLE assigned the PLE easement to Defendants.

The essence of Plaintiffs' Complaint is that Plaintiffs have been damaged as a direct result of the Defendants stopping or storing rail cars on the rail lines at issue. Plaintiffs claim that Defendants have;

continually held, stored, and/or otherwise impermissibly stopped rail cars on various tracks on [Plaintiffs'] Property in a manner that (1) adversely impacts not only [Plaintiffs'] ability to utilize these tracks, but also [Plaintiffs'] current operations and [Plaintiffs'] intended development plans, (2) allows hazardous contents of rail cars containing, inter alia, oil, chemicals and/or untarped construction and demolition debris to contaminate [Plaintiffs'] Property, and (3) creates an attractive nuisance to vagrants and vandals.

Count I of the Complaint claims that Defendants' conduct, as set forth above, constitutes misuse, abuse and overburdening of LTV Easement and the PLE Easement for which Plaintiffs request preliminary and permanent injunctive relief requiring Defendants to cease and desist holding, storing and/or otherwise impermissibly stopping rail cars on the rail lines on Plaintiffs' property. Count II of the Complaint states that Defendants' conduct, as set forth above, unreasonably exceeds the proper and authorized scope of the easements agreements entitling Plaintiffs to monetary damages. Count III of the Complaint claims that Defendants' stopping, holding and storing railcars on Plaintiffs' property unjustly enriched Defendants entitling

Plaintiff to monetary damages. Finally, Count IV of the Complaint claims that Defendants' above-described actions constitute a trespass entitling Plaintiffs' to monetary damages.

Each of the Defendants are Class III rail carriers registered with the Surface Transportation Board. Further, all of the Defendants are engaged in interstate commerce and their use of rail lines located on Plaintiffs property was in furtherance of interstate commerce.

## **II. CONCLUSIONS OF LAW**

As rail carriers engaged in interstate commerce the Defendants are covered by the Interstate Commerce Commission Termination Act of 1994, 49 U.S.C. §§10101 ("ICCTA"). ICCTA's, 49 U.S.C. § 10501(b), provides as follows:

(b) The jurisdiction of the Board over—

(1) transportation by rail carriers, and the remedies provided in this part [49 U.S.C. §§10101 et seq.] with respect to rates, classifications, rules (including car service, interchange, and other operating rules), practices, routes, services, and facilities of such carriers; and

(2) the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities, even if the tracks are located, or intended to be located, entirely in one State,

is exclusive. Except as otherwise provided in this part [49 U.S.C. §§10101 et seq.], the remedies provided under this part [49 U.S.C. §§10101 et seq.] with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law.

49 U.S.C. §10501. "To come within the scope of 49 U.S.C. 10501(B), these activities must be both: (1) transportation; and (2) performed by, or under the auspices of, a rail carrier." Canadian Nat'l Railway Co. v. City of Rockwood, Docket No. 04-40323, 2005 WL 1349077, \*3 (E.D.Mich. June 1, 2005). The term "rail carrier" means "a person

providing common carrier railroad transportation for compensation.” 49 U.S.C. §

10102(5). The term “transportation” is defined to include the following:

(A) a locomotive, car, vehicle, vessel, warehouse, wharf, pier, dock, yard, property, facility, instrumentality, or equipment of any kind related to the movement of passengers or property, or both, by rail, regardless of ownership or an agreement concerning use; and

(B) services related to that movement, including receipt, delivery, elevation, transfer in transit, refrigeration, icing, ventilation, storage, handling, and interchange of passengers and property.

49 U.S.C. § 10102(9). Because “transportation” is defined in ICCTA to include rail cars used and stored by rail carriers, and because Defendants are rail carriers, issues involving Defendants’ easements and the storage of Defendants’ rail cars falls under the exclusive jurisdiction of the STB.

Defendants are rail carriers’ subject to the jurisdiction of the STB, pursuant to 49 U.S.C. §10101, et seq. The STB is the administrative agency charged with expert skill and knowledge of the interstate transportation industry, including rail carriers. F.P. Corp. v. Ken Way Transp., Inc., 821 F. Supp. 1032, 1036 (E.D. Pa. 1993) (referring to the Interstate Commerce Commission, the STB’s predecessor); see also 49 U.S.C.A. § 10501 (West 1999).

The issues in this case fall within the primary jurisdiction of the STB. Courts developed the doctrine of primary jurisdiction to avoid conflicts between the courts and administrative agencies charged with particular regulatory duties. Untied States v. Western Pacific R.R. Co., 352 U.S. 59, 63 (1956). Primary jurisdiction comes into play when judicial enforcement of a claim requires the resolution of issues which, under the regulatory scheme, have been placed within the special competence of an administrative body. Id. In such a case, the court should suspend the case pending referral of such issues to the administrative body. Id. In general, a court should refer a matter to an administrative agency for resolution if it appears that the matter

involves technical or policy considerations that are beyond the court's ordinary competence and within the agency's particular field of expertise, or where there is the possibility of contradictory rulings from the agency and the court. MCI Communications Corp. v. AT&T, 496 F.2d 214, 220 (3d Cir. 1974).

Regarding the primary jurisdiction of the STB, it has been held that " '[T]he primary jurisdiction doctrine requires initial submission to the [STB] of questions that raise issues of transportation policy which ought to be considered by the [STB] in the interests of a uniform and expert administration of the regulatory scheme laid down by [the ICCTA].' " Rymes Heating Oils, Inc. v. Springfield Terminal R. Co., 358 F.3d 82, 90-91 (1<sup>st</sup> Cir. 2004), quoting I.C.C. v. Atlantic Coast Line R. Co., 383 U.S. 576, 579 (1996) (bracketed language in original). This case squarely meets these guidelines.

Plaintiffs want this Court to interpret the language of the easements in their favor and rule that "railroad operations" or "use" of the lines does not include the storage or stopping of rail cars. The Court has reviewed the easement agreements, however, and they do not expressly prohibit the Defendants from stopping or storing cars on the lines. To the contrary, the easements expressly allow the Defendants to "operate" and "use" the LTV lines and use the P&LE lines for "railroad operations". Moreover, "[n]ot all railroad 'operations' are conducted while the train is continuously moving...Dictating where and for how long a train may stop ...[is]... a regulation of railroad operations." Burlington Northern & Santa Fe Railway Co. v. Department of Transp., 227 Or. App. 468, 206 P.3d 261, 264. This determination is best made by the STB who not only possesses expertise regarding the standards, practices, and requirements of rail carriers, but is vested with the responsibility for protecting rail carriers from unreasonable, arbitrary and/or inconsistent local regulation that interferes with interstate

commerce. The STB is therefore best suited to determine the issues in this case and whether Plaintiffs' requested relief would impair or impede rail transportation under ICCTA. This Court also notes that "[a]s the agency authorized by Congress to administer the Termination Act, the Transportation Board is " 'uniquely qualified to determine whether state law...should be preempted' " by the termination act.' " Green Mountain Railroad Corp. v. Vermont, 404 F.3d 638, 642 (2d Cir. 2005), quoting CSX Transp., Inc. v. Ga. Pub. Serv. Comm'n, 944 F.Supp. 1573, 1584 (N.D. Ga. 1996).

The issues involved in this case clearly involve questions which fall within the Surface Transportation Board's particular field of expertise and/or involve jurisdictional, policy or technical considerations which are outside of this Court's ordinary competence. For that reason, Defendants' Motion to Refer this matter to the Surface Transportation Board is hereby granted.

#### **DECISION**

1. This matter is referred to the United State Surface Transportation Board for determination of the questions specified below;
2. That this referral is made to give the parties a reasonable opportunity within which to apply to the Surface Transportation Board for a ruling as to the following questions;
  - a. Do the issues regarding Defendants stopping or storing cars on the rail lines in question, in alleged violation of the easement agreements, fall within the jurisdiction of the STB?
  - b. Do the easements in question allow the Defendants to store or stage rail cars on the lines covered by those easements?
  - c. If the Defendants have violated the easement agreements what damages are available to the Plaintiffs?
3. That the Plaintiffs shall initiate proceedings with the Surface Transportation Board seeking a determination of the questions listed above within sixty (60) days from the date of this Order;

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4. That the parties shall provide the Surface Transportation Board with copies of documents from the record in this case which the parties consider relevant to the determinations to be made by the Surface Transportation Board;
5. That the parties shall provide the relevant portions of the record in this case to the Surface Transportation Board within eighty (80) days of the date of this Order or as directed by the Surface Transportation Board;
6. That this Order not be read to limit the authority of the Surface Transportation Board to address, outside of the scope of this referral, other issues over which the Board has authority;
7. That this Court shall retain jurisdiction of his case pending the Surface Transportation Board's review of the referred questions;
8. That his case shall be stayed pending resolution of the above issues by the Surface Transportation Board.

Dated: SEP 1 2009

  
Magistrate

#### **NOTICE TO ATTORNEYS AND PARTIES**

Pursuant to Civil Rule 53(D) (3), the parties shall have fourteen (14) days from the date of the filing of this Decision to file written Objections with the Clerk of Court's Office. The Objections shall be specific and state with particularity all grounds of objection. Any objection to a factual finding shall supported by a transcript of all the evidence submitted to the magistrate relevant to that finding or an affidavit of that evidence if a transcript is not available. Any such Objections must be served upon all parties to this action, and a copy must be provided to the Common Pleas Court. A party shall not assign as error on appeal the Court's adoption of any finding of fact or conclusion of law in that Decision unless the party has timely and specifically objected to that finding or conclusion as required by Civil Rule 53(E)(3).

**THE CLERK SHALL SERVE NOTICE  
OF THIS ORDER UPON ALL PARTIES  
WITHIN THREE (3) DAYS PER CIV.R.5**

**000507**